



Department of State Police

General Order

Effective Date:

August 1, 2017

Number:

ADM-18

Subject:

Unlawful Harassment, Sexual Harassment and Discrimination

Policy

The Department shall promote and maintain a working environment free from unlawful harassment, sexual harassment and discrimination.

Purpose

This policy addresses all forms of sexual harassment and addresses discrimination and unlawful harassment based on race, color, religious creed, national origin, age (40 or older), sex (including pregnancy), gender identity or expression, sexual orientation, genetic information, ancestry, handicap (disability), active military or veteran status, participation in discrimination complaint-related activities or other protected class under law.

Note: The definitions found in 804 CMR 3.00, et seq., as amended (the MCAD's *Employment Discrimination Guidelines*), shall be applicable to, and are hereby incorporated into, this policy.

This policy does not address conduct, conflicts, or disagreements otherwise addressed through the chain of command or within Department Policy and Procedures. Internal complaints or concerns, which do not relate to an identified protected class or sexual harassment, will not be addressed under this policy. Such complaints may have another course of action such as in ADM-14 Personnel Investigations or SUP-12 Office of the Ombudsman.

Harassment Investigation Unit (HIU)

The Sexual Harassment Officer for the Department is the Division Commander of Standards and Training.

Harassment Investigation Officer(s) shall be Commissioned Officer(s) assigned by the Colonel/Superintendent and shall report to the Division of Standards and Training.

All reports of unlawful harassment, sexual harassment or discrimination shall be forwarded to the Harassment Investigation Unit (HIU). Upon receipt of such a report, the HIU will commence an investigation or recommend an alternative avenue for resolution. All HIU investigations shall remain confidential to the extent practicable.

All Supervisors (except for Supervisors assigned to the Office of the Ombudsman and/or Employee Assistance Unit) shall immediately report incidents of unlawful harassment, sexual harassment or discrimination to the Harassment Investigation Unit.

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Discrimination Defined

Discrimination is the unequal and unlawful treatment of persons *in employment related decisions* because of race, color, religious creed, national origin, age (40 or older), sex (including pregnancy), gender identity or expression, sexual orientation, genetic information, ancestry, handicap (disability), active military or veteran status, participation in discrimination complaint-related activities and/or other protected class under law.

Discrimination Examples

Conduct may include, but is not limited to, when the Department:

- Bases employment decisions solely on the race of an applicant; or
- Makes assignments solely on the age of an employee.

Unlawful Harassment Defined

Unlawful harassment is unwelcome conduct that is based on race, color, religious creed, national origin, age (40 or older), sex (including pregnancy), gender identity or expression, sexual orientation, genetic information, ancestry, handicap (disability), active military or veteran status, participation in discrimination complaint-related activities and/or other protected class under law.

Harassment becomes unlawful when:

- Enduring the offensive conduct becomes a condition of continued employment; or
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Unlawful Harassment Examples

Unlawful harassment may include, but is not limited to, conduct, based on race, color, religious creed, national origin, age (40 or older), sex (including pregnancy), gender identity or expression, sexual orientation, genetic information, ancestry, handicap (disability), active military or veteran status, participation in discrimination complaint-related activities and/or other protected class under law, that involves:

- Offensive jokes, slurs, epithets or name calling, or other derogatory comments;
- Physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, or other verbal or physical conduct that denigrates or shows hostility or aversion; or
- Objects, photographs, images, or demeaning gestures connected to an individual's membership in a protected class.

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Sexual Harassment Defined

Sexual harassment is unwelcome sexual conduct such as: sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature, when:

- Submission to or rejection of such advances, requests or conduct is explicitly or implicitly made a term or condition of employment or as a basis for employment decisions;
- Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance; or
- Such advances, requests or conduct have the purpose or effect of creating an intimidating, hostile, humiliating, or sexually offensive work environment.

It is not necessary to meet the threshold of sexual harassment as defined by law to be considered a violation of this policy.

Sexual Harassment Examples

Examples of sexual harassment, may include but are not limited to:

- Direct sexual advances or assaults;
- Sexual inquiries, jokes, and epithets;
- Derogatory comments about a person's sex, sexual orientation or gender identity or expression;
- Other forms of verbal abuse of a sexual nature, such as whistling or catcalling;
- Offensive or unnecessary touching, pinching, patting, etc.;
- The display of sexually suggestive posters, photographs, or objects; or
- An employee receiving job benefits contingent on sexual favors (quid pro quo).

Sexual Harassment Victims

Victims of sexual harassment <u>may</u> be...	The harasser <u>may</u> be...
Of the same or different gender as the harasser.	Of either gender.
A third person who is not the intended target of the sexual harassment or conduct.	Any employee or in certain circumstances someone who is not an employee (vendors, contractors).

Liability and Sanctions

Employees may be personally liable if they engage in unlawful harassment, sexual harassment or discrimination.

Any employee found to have engaged in unlawful harassment, sexual harassment, or discrimination in violation of this policy is subject to disciplinary action up to and including termination.

Supervisors may potentially be personally liable if they knew or should have known about incidents of sexual harassment, and did not take appropriate corrective action.

The Department may not be held responsible in cases of unlawful harassment, sexual harassment, and/or discrimination, if it can show that it took prompt and appropriate corrective action.

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Complaint Procedure

Step	Action
1	<p>Process for reporting incidents of unlawful harassment, sexual harassment discrimination, and/or retaliation:</p> <ul style="list-style-type: none"> • Notify a supervisor, who shall assist in reporting the complaint to the Harassment Investigation Unit (HIU); • Fax a copy of the SP 387 <i>Unlawful Harassment, Sexual Harassment and Discrimination Complaint</i> form directly to the HIU at (508) 820-2149, or email to MSPHIU@MASSMAIL.STATE.MA.US; • Forward the original SP 387 to the HIU 470 Worcester Road, Framingham, MA 01702; and/or • Report Complaint to the Director of the Human Resources Section at GHQ.
2	<p>The HIU shall promptly:</p> <ul style="list-style-type: none"> • Respond to the complainant; • Review all available information pertaining to the complaint; • Determine if the aggrieved individual(s) is/are a member of a class protected under the law and this policy; • Determine if the alleged conduct meets the definition of unlawful harassment, sexual harassment or discrimination as defined in this policy; • Determine an appropriate course of action, including, but not limited to, alternative resolutions; • Conduct an investigation if warranted, to include, but not limited to, an interview with person(s) filing the complaint, any witnesses, and the person(s) alleged to have engaged in unlawful harassment, sexual harassment and/or discrimination; • To the extent practicable, ensure that all interviews are digitally recorded; • Consult procedures included within the Department's Resolution Process as outlined within the Affirmative Action Plan; and • Make a report of findings and forward report to the Commander of the Division of Standards and Training. <p>Consistent with Commonwealth and Department Policy/Rules and Regulations, and in a manner determined by the Division Commander of Standards and Training, completed confidential reports will be made available for inspection to complainants and persons alleged to have committed unlawful harassment, sexual harassment, discrimination and/or retaliation upon request.</p>

Continued next page.

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Complaint Procedure (Continued)

Step	Action
3	<p>An employee may also file a complaint with:</p> <p>Massachusetts Commission Against Discrimination (MCAD) www.mass.gov/mcad <u>Main Office:</u> One Ashburton Place, Room 601, Boston, MA 02108 Phone 617-994-6000 TTY: 617-994-6196</p> <p><u>Regional Offices</u> New Bedford Office: 800 Purchase Street, Room 501, New Bedford, MA 02740 Phone: 508-990-2390</p> <p>Springfield Office: 424 Dwight Street, Rm. 220, Springfield, MA 01103 Phone 413-739-2145</p> <p>Worcester Office: 484 Main Street, Room 320 Worcester, MA 01608 Phone 508-453-9630</p> <p>Office of Diversity and Equal Opportunity One Ashburton Place, Room 213 Boston, MA 02108-1516 Telephone 617-727-7441 (Note: this office takes only Discrimination complaints.)</p> <p>US Equal Employment Opportunity Commission (EEOC) www.eeoc.gov John F. Kennedy Federal Building 475 Government Center, Boston, MA 02203 Phone: 1-800-669-4000 TTY: 1-800-669-6820</p>
4	<p>The Harassment Investigation Unit shall notify the Department's Office of Diversity and Equal Opportunity of complaints of unlawful harassment or discrimination.</p>

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Responsibilities

Position	Duties
Supervisors	<ul style="list-style-type: none"> • Aggressively monitor the workplace to prevent and detect unlawful harassment, sexual harassment, and discrimination; • Take appropriate corrective action to stop all types of unlawful harassment, sexual harassment, and discrimination; • Immediately report incidents of unlawful harassment, sexual harassment, or discrimination to the Harassment Investigation Unit; • Assist any employee in filing a complaint, or obtaining information on the Commonwealth's Sexual Harassment Policy; and • Contact the HIU for information and guidance pertaining to unlawful harassment, sexual harassment and/or discrimination.
All Employees	<ul style="list-style-type: none"> • Shall not engage in any harassment, sexual harassment, or discrimination; • Shall cooperate in investigations of any harassment, sexual harassment, and discrimination; • Shall actively participate in the Department's efforts to prevent and eliminate any harassment, sexual harassment, and discrimination; and • May contact the HIU for information and guidance pertaining to any harassment, sexual harassment and/or discrimination.

Office of the Ombudsman/ Employee Assistance Unit

All employees should be aware that conversations with the Office of the Ombudsman and/or Employee Assistance Unit are considered confidential and are not the proper venue to notify the Department of unlawful harassment, sexual harassment and/or discrimination complaints. Supervisors assigned to the Office of the Ombudsman or the Employee Assistance Unit are not required to report such complaints through the official chain of command.

Retaliation

Any retaliation against an individual who has complained about unlawful harassment, sexual harassment, discrimination or for cooperating with a complaint and/or investigation of harassment, sexual harassment, or discrimination is unlawful and shall not be tolerated. Any such retaliation shall be a violation of this policy. Incidents of such retaliation shall be reported to the HIU in To/From format.

Distribution of Policy

This policy shall be issued to each employee upon hiring and to all employees annually thereafter. This policy shall be continuously posted and available on DocuShare.

Statewide Policy

The Department shall adhere to the Commonwealth of Massachusetts Human Resources Division Sexual Harassment Policy.

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Findings

In the event that an investigation is conducted regarding unlawful harassment, sexual harassment, discrimination, and/or retaliation, the findings shall be classified as one of the following:

- *Unfounded* - Complaint or incident is false and not factual;
- *Exonerated* - Incident occurred, but employee's action was lawful and proper;
- *Not Sustained* - Insufficient evidence to prove or disprove the complaint; or
- *Sustained* - Complaint or incident is supported by sufficient evidence to prove employee misconduct.

Cases in which the complainant has withdrawn the complaint shall be classified as withdrawn. Cases that are approved for an alternate resolution shall be classified as referred. In all cases, a record shall be made in the case file. All findings, withdrawals and referrals shall be reviewed and approved by the Division Commander of Standards and Training.

Any complaint which is sustained shall be deemed a violation of ADM-18 and/or the Rules and Regulations of this Department and shall be handled in accordance with Rules and Regulations of the Department, as applicable. Whether found to be a violation of ADM-18 or not, any inappropriate employee conduct, including but not limited to making or providing false claims, reports, information, statements and/or testimony, may be deemed a violation of Department Policy/Rules and Regulations and is subject to investigation under ADM-14 Personnel Investigations.

NOTE: Nothing in this policy should prevent members from taking appropriate and timely action for any allegations of criminal activity or criminal acts.

References

ADM-14 *Personnel Investigations*
ADM-36 *Diversity and Equal Opportunity*
SUP-04 *Employee Assistance Unit*
SUP-12 *Office of the Ombudsman*
MGL c.151B, s.3, 3a, and 4
MGL c.214, s. 1c
804 CMR 3.00 Employment Discrimination Guidelines
MCAD Model Sexual Harassment Policy
US Equal Employment Opportunity Commission Regulations and Guidance
Department Rules and Regulations
Department of State Police Affirmative Action Plan
Executive Order 526- Order Regarding Non-Discrimination, Diversity, Equal Opportunity, and Affirmative Action
Commonwealth of Massachusetts HRD Sexual Harassment Policy
Title VII of the Civil Rights Act of 1964
SPAM Collective Bargaining Agreement Article 27
SP 387 *Unlawful Harassment, Sexual Harassment and Discrimination Complaint form*

Promulgated By:





Complainant's Name:	Title/Rank:
Work Location:	Day-time Telephone:

Please accurately summarize the events concerning your complaint(s).

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SP387 Revised 03-2017